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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,163	04/12/2002	Hans Bomer	C & F 1032-035	4955

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EXAMINER

TRUONG, THANH K

ART UNIT PAPER NUMBER

3721

DATE MAILED: 06/06/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/937,163	BOMER ET AL.
Examiner	Art Unit	
Thanh K Truong	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 April 2002.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 16-28 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 16-28 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This action is in response to applicant's preliminary amendment, Paper No. 6, received on April 12, 2002.
2. Applicant's cancellation of claims 1-15 in Paper No. 6 is acknowledged.

#### ***Specification***

3. The disclosure is objected to because of the following informalities: same part with different referent numbers – "supply roll 25" (page 9, line 1) and "supply rolls 26 (page 9, line 2). Appropriate correction is required.

#### ***Response to Preliminary Amendment***

4. The amendment to the specification and the abstract filed on April 12, 2002 has not been entered since it is not in compliance with 37 CFR 1.121.

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 16-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16, line7, the phrase "the region of a pocket" is vague and indefinite, for it is unclear what region is the applicant referred to. There is no reference of a region anywhere in the claim.

Claim 16 is a method claim, but it does not positively point out the method steps that define the claimed invention. It is unclear what are the method steps, for example, the recitations:

"wherein the opening is punched out of a packaging material, the packaging material is coated at least in the area of the opening" -- is the punching step performed before or after the material is coated?

"wherein the package sleeve is slid onto a mandrel of a mandrel wheel upstream from a filling machine for filling the package" – is the filling the package a step of the method being claimed?

→ Claim 18, the phrase "the package sleeve is rotated about its longitudinal axis...and the location where the tear-off strip is attached" – is the package sleeve rotated while it is on the mandrel or off the mandrel?

→ Claim 19, the phrase "the tear-off strip is applied between the mandrels of a mandrel wheel" and "one welding device which is inserted between two mandrels" – it is unclear how the application of the tear-off strip is being performed between the mandrels while the package sleeve is on the mandrel?

#### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 16, 17, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakajima (4,516,382).

Nakajima discloses (figures 1A–1F) a method of producing a laminated package with an opening that is sealed by a tear-off strip, comprising: an opening is punched out of a packaging material (figure 1A & 1B); the package material is coated (column 7, lines 49-52); a package sleeve is created from the packaging material (figure 1A-1C); a tear-open strip is attached to the opening in the package sleeve (figure 1C); and the package sleeve is slid onto a mandrel of a mandrel wheel upstream from a filling machine for filling the package (figures 3-5).

Nakajima implicitly discloses that the tear-open strip is attached at the mandrel of the mandrel wheel. Figures 1A-1C implied that the tear-open strip is attached to the opening of the package sleeve before the bottom of the package sleeve is completely folded and sealed, and referring to figure 3, one would conclude that the package sleeve is on the mandrel 8 of the mandrel wheel while the tear-open strip is applied to the package sleeve somewhere before bottom sealing device 14.

Nakajima further discloses: the package sleeve is conveyed to the filling machine in such a way that its opening points outward across the working direction of the filling machine (figures 3-5); and the filling machine is a filling machine having multiple lanes (figures 3 & 4).

#### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 21, 22, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakajima (4,516,382) in view of Watanabe (4,986,859).

As discussed above in paragraph 8 of this office action, Nakajima discloses the claimed invention, but Nakajima does not explicitly disclose that the tear-off strip is attached by welding; the tear-off strip is pulled off from a supply roll, and is detached from the supply roll by a cutting device.

Watanabe discloses a method of attaching a tear-off strip on a cut-out hole of a container (figure 10) comprising: the tear-off strip is attached by ultrasonic welding, and the tear-off strip is detached from the supply roll by a cutting device (figures 1, 2 & 10, and column 4, lines 8-19). Watanabe further discloses the tear-off strip is pulled off from a supply roll having a plurality of tear-off strips (figure 2). Watanabe provides an improve method that prevents leak between the tear-off strip and the container thus prevents the spoilage of the content within the container (column 2, lines 25-34).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Nakajima's method by applying the method of attaching the tear-off strip over a punched out hole as taught by Watanabe for providing an improve method that ensure a strong sealing of the punched out hole of the container by a tear-off strip.

11. Claims 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakajima (4,516,382).

As discussed above in paragraph 8 of this office action, Nakajima discloses the claimed invention, but Nakajima does not expressly disclose an aseptic station of the filling machine down stream from where the tear-off strip is applied.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Nakajima method to include an aseptic station of the filling machine before filling the container since it was known in the art that an aseptic station would provide a means to sanitize the container before filling to prevent any spoilage due to contamination of the content within the container.

12. Claims 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakajima (4,516,382).

As discussed above in paragraph 8 of this office action, Nakajima discloses the claimed invention, but Nakajima does not expressly disclose that the tear-off strip is attached by gluing.

Using glue to adhere two separate parts together is well known practice in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Nakajima method to use glue to attach the tear-off strip to the container instead of an ultrasonic welding method, as a matter of design choice, providing diversity and flexibility to the method of attaching tear-off strip to the container.

13. Claims 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakajima (4,516,382).

As discussed above in paragraph 8 of this office action, Nakajima discloses the claimed invention, but Nakajima does not expressly disclose that the tear-off strip consists of a tear-resistant aluminum strip.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to select a tear-resistant aluminum as the material for the tear-off

strip in Nakajima method for it provides additional strength, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

***Allowable Subject Matter***

14. Claims 18 and 19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 872-9301.

tkt  
June 2, 2003



Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700